

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L. Madoff,

Plaintiff,

v.

151797 CANADA INC.,

Defendant.

Adv. Pro. No. 10-04631 (CGM)

**DECLARATION OF NICHOLAS J. CREMONA IN SUPPORT OF
TRUSTEE'S MOTION FOR SUMMARY JUDGMENT**

I, Nicholas J. Cremona, declare the following:

1. I am a Partner with the law firm of Baker & Hostetler LLP, counsel to Irving H. Picard, as trustee ("Trustee") for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor

Protection Act, 15 U.S.C. §§ 78aaa–III, and the chapter 7 estate of Bernard L. Madoff. I submit this Declaration in support of the Trustee’s Motion for Summary Judgment.

2. Attached hereto as Exhibit 1 is a true and correct copy of the SEC Form BD for Bernard L. Madoff dated December 31, 1959 (PUBLIC0003607).

3. Attached hereto as Exhibit 2 is a true and correct copy of the Articles of Organization for Bernard L. Madoff Investment Securities LLC dated January 1, 2001.

4. Attached hereto as Exhibit 3 is a true and correct copy of SEC Amended Form BD for Bernard L. Madoff Investment Securities LLC dated January 12, 2001.

5. Attached hereto as Exhibit 4 is a true and correct copy of SEC Form ADV for Bernard L. Madoff Investment Securities LLC dated August 25, 2006 (PUBLIC0003729).

6. Attached hereto as Exhibit 5 is a true and correct copy of BLMIS’s Amended and Restated Operating Agreement dated April 14, 2004 (MADTSS01160350).

7. Attached hereto as Exhibit 6 are true and correct copies of letters from BLMIS to various financial institutions.

8. Attached hereto as Exhibit 7 is a true and correct copy of an exemplar of JPMorgan Chase Bank, N.A. statements for account #xxxxxx1703 and account #xxxxxxxxxx1509.

9. Attached hereto as Exhibit 8 are true and correct excerpts from the testimony of Frank DiPascali, Jr. during the multi-day criminal trial *United States v. Bonventre*, No. 10-CR-228 (LTS) (S.D.N.Y.), ECF Nos. 858, 862, 884.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Plea Allocation of Bernard L. Madoff, *United States v. Madoff*, No. 09-CR-213 (DC) (S.D.N.Y. Mar. 12, 2009), ECF No. 57.

11. Attached hereto as Exhibit 10 is true and correct copy of the Plea Allocution of Frank DiPascali, Jr., *United States v. DiPascali*, No. 09-CR-764 (RJS) (S.D.N.Y. Aug. 11, 2009), ECF No. 12.

12. Attached hereto as Exhibit 11 is true and correct copy of the Plea Allocution of David L. Kugel, *United States v. Kugel*, No. 10- CR-228 (LTS) (S.D.N.Y. Nov. 21, 2011), ECF No. 188.

13. Attached hereto as Exhibit 12 is a true and correct copy of the Plea Allocution of Irwin Lipkin, *United States v. Irwin Lipkin*, No. 10-CR-228 (LTS) (S.D.N.Y. Nov. 8, 2012), ECF No. 288.

14. Attached hereto as Exhibit 13 is a true and correct copy of the Plea Allocution of Eric S. Lipkin, *United States v. Eric S. Lipkin*, No. 10-CR-228 (LTS) (S.D.N.Y. June 6, 2011), ECF No. 148.

15. Attached hereto as Exhibit 14 is a true and correct copy of the Plea Allocution of Enrica Cotellessa-Pitz, *United States v. Cotellessa-Pitz*, No. 10-CR-228 (LTS) (S.D.N.Y. Dec. 19, 2011), ECF No. 1512.

16. Attached hereto as Exhibit 15 is a true and correct copy of the Defendant's BLMIS customer statement, dated November 30, 2008 (MADTSS00735077–5080).

17. Attached hereto as Exhibit 16 are true and correct copies of Defendant's discovery responses:

- Response of 151797 Canada Inc. to Trustee's First Set of Interrogatories, dated April 20, 2015; and
- Responses of Judith Pencer to Trustee's First Set of Interrogatories, dated April 20, 2015.

18. Attached hereto as Exhibit 17 is a true and correct copy of the BLMIS Customer Agreements for the Canada Inc. Account (AMF00073886–3892).

19. Attached hereto as Exhibit 18 is a true and correct copy of the BLMIS Verification of Address Change form for the Canada Inc. Account, dated March 7, 2005 (AMF00073841).

20. Attached hereto as Exhibit 19 are true and correct copies of correspondence from Defendant to BLMIS:

- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated December 4, 1998;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated April 27, 1999;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated June 4, 1999;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated November 15, 1999;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated April 9, 2000;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated October 30, 2000;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated April 15, 2001;
- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated October 23, 2001;

- Facsimile from Samuel Pencer to BLMIS regarding Canada Inc. Account, dated April 13, 2002;
- Facsimile from Judy Pencer to BLMIS regarding Canada Inc. Account, dated October 2, 2003;
- Facsimiles from Judy Pencer to BLMIS regarding Canada Inc. Account, dated October 27, 2008; and
- Facsimile from Judy Pencer to BLMIS regarding Canada Inc. Account, dated November 21, 2008.

21. Attached hereto as Exhibit 20 is a true and correct copy of the Tr. of Oral Arg. at 114:10–11, *Picard v. Marilyn Bernfeld Tr.*, Adv. Pro. No. 10-05143 (SMB) (Bankr. S.D.N.Y. Oct. 28, 2015) and Tr. of Oral Argument at 100:19, *Picard v. Mendelow*, Adv. Pro. No. 10-04283 (SMB) (Bankr. S.D.N.Y. Oct. 28, 2015).

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing statements are true and correct.

Dated: November 18, 2022
New York, New York

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ Nicholas J. Cremona
Nicholas J. Cremona